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Attorneys for Judgment Creditor
 CRYSTAL LEI

UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

DEMAYAN,)	CASE NO. 3:11-cv-01814-RS
)	
Appellant,)	
)	DECLARATION OF MARK A. SERLIN IN
vs.)	SUPPORT OF RENEWED APPLICATION
)	FOR ISSUANCE OF ORDER TO SHOW
TONY FU, CRYSTAL LEI, WEI SUEN,)	CAUSE RE CONTEMPT AGAINST
BRYANT FU, and STELLA HONG)	DEMAYAN
CHEN,)	
)	
Appellees.)	

I, Mark A. Serlin, declare as follows:

1. I am an attorney duly licensed to practice law by the State of California and am authorized to practice before this Court. I am counsel to judgment creditor Crystal Lei in the above-captioned matter. I make this declaration based on personal knowledge, and if called as a witness to testify as to matters stated herein, I would be willing and competent to do so.

2. Attached hereto as Exhibit A is a prior declaration (docket no. 50-1) which I submitted in support of the prior application for issuance of order to show cause re contempt against Demas Yan ("Debtor").

3. Attached hereto as Exhibit B is the Court's order dated August 10, 2017 (docket no. 60) compelling Debtor to produce various documents, including but not limited to tax returns.

4. Attached hereto as Exhibit C is Debtor's response to the Court's order (without the voluminous bank record exhibits).

5. My client has incurred \$6,332.50 of attorneys' fees (14.9 hours at \$425.00/hour) and costs (process service fee) of \$75.00 for a total of \$6,407.50 appearing at the debtor's examination at which Debtor failed to produce any documents as well as preparing the prior application for issuance of order to show cause and the instant application.

6. Based on applicable Ninth Circuit authority, I believe that it is appropriate and necessary that the Court impose sanctions of \$500.00 per day against Debtor for each day after August 31, 2017 (the production date ordered by this Court) which he fails and refuses to produce tax returns and other documents which he was ordered to produce pursuant to this Court's order. Notably, Debtor does not dispute that he sold a condominium in Hong Kong for millions of Hong Kong dollars and he has failed to produce any documents relating thereto even though he has been a licensed practicing attorney since 2008 and it is simply not credible that he has no documents relating to a real estate sales transaction which occurred in 2015. Moreover, although claiming attorney-client privilege for his accounts receivable, Debtor has failed to provide any privilege log whatsoever.

7. Finally, Debtor failed to submit any objection, much less a motion to quash, to any portion of the subpoena duces tecum which required production of documents at the debtor's examination held in this Court on June 27, 2017.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed at Sacramento, California on September 5, 2017.

MARK A. SERLIN

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DEMAYAN,

Appellant,

vs.

TONY FU, CRYSTAL LEI, WEI SUEN,
 BRYANT FU, and STELLA HONG
 CHEN,

Appellees.

CASE NO. 3:11-cv-01814-RS

**DECLARATION OF MARK A. SERLIN IN
 SUPPORT OF APPLICATION FOR
 ORDER TO SHOW CAUSE RE
 CONTEMPT**

I, Mark A. Serlin, declare as follows:

1. I am an attorney duly licensed to practice law by the State of California and am authorized to practice in this Court. I am counsel to judgment creditor Crystal Lei ("Lei") in the above-captioned matter. I make this declaration based on personal knowledge, and if called as a witness to testify as to matters stated herein, I would be willing and competent to do so.

2. On May 12, 2017, I caused a debtor's examination order and subpoena duces tecum to be personally served on judgment debtor Demas Yan ("Yan"); a true copy of that proof of service is attached hereto as Exhibit A. The subpoena, a true copy of which is attached hereto as Exhibit B, required Yan to bring various documents with him to the examination.

///

/s/ Mark A. Serlin
MARK A. SERLIN

Yan v. Fu, et al.
Case No. 3:11-cv-01814-RS

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CRYSTAL LEI

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DEMAS YAN,

Appellant,

vs.

TONY FU, CRYSTAL LEI, WEI SUEN,
BRYANT FU, and STELLA HONG
CHEN,

Appellees.

CASE NO. 3:11-cv-01814-RS

**PROOF OF SERVICE OF ORDER OF
EXAMINATION ON DEMAS YAN**

Date: June 27, 2017
Time: 9:00 a.m.
Ctm: F

ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS) SERLIN & WHITEHEAD 700 E STREET SACRAMENTO, CA 95814		TELEPHONE NO. (916) 446-0790	FOR COURT USE ONLY	
ATTORNEY FOR (NAME):		REFERENCE NUMBER 00267524-01		
Insert name of court, judicial district or branch court, if any, and post office and street address UNITED STATES DISTRICT COURT,				
SHORT NAME OF CASE YAN vs. FU				
PROOF OF SERVICE	DATE:	TIME:	DEPT/DIV:	CASE NUMBER: 3:11-CV-01814-RS

I am and was on the dates herein mentioned over the age of eighteen years and not a party to this action;

I served the:

APPLICATION AND ORDER FOR APPEARANCE AND EXAMINATION; CIVIL SUBPOENA (DUCES TECUM) FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS AND THINGS AT TRIAL OR HEARING AND DECLARATION;

Name: DEMAS YAN

Date of Delivery: May 12, 2017 HDATE:

Time of Delivery: 09:28 am

Place of Service: 400 MCALLISTER ST. #302
SAN FRANCISCO, CA 94102

(Business)

Manner of Service: Personal Service - By Personally Delivering copies to the person on whom the service is required.

Fee for service: \$ 75.00

JUDICIAL COUNCIL FORM, RULE #982 (A)(23)

☒ Registered: . . . San Francisco . . . County,
Number: . . . 1180
Expiration Date: 10/14/2018

PREFERRED LEGAL SERVICES, INC.
601 Van Ness Ave, Suite J
San Francisco, CA 94102
(415) 882-2250

302/00267524-01

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
on: . . . May 12, 2017
at: . . . San Francisco . . . , California.

Signature:

Name: NATE FREED

Title: (d) registered California process server

Exhibit B

PLAINTIFF/PETITIONER: Demas Yan	CASE NUMBER:
DEFENDANT/RESPONDENT: Tony Fu, et al.	3:11-cv-01814-RS

The production of the documents, electronically stored information, or other things sought by the subpoena on page one is supported by (check one):

☒ the attached affidavit or ☐ the following declaration:

DECLARATION IN SUPPORT OF CIVIL SUBPOENA (DUCES TECUM) FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS, ELECTRONICALLY STORED INFORMATION, AND THINGS AT TRIAL OR HEARING
(Code Civ. Proc., §§ 1985, 1987.5)

1. I, the undersigned, declare I am the ☐ plaintiff ☐ defendant ☐ petitioner ☐ respondent
☐ attorney for (specify): ☐ other (specify):

in the above-entitled action.

2. The witness has possession or control of the documents, electronically stored information, or other things listed below, and shall produce them at the time and place specified in the Civil Subpoena for Personal Appearance and Production of Records at Trial or Hearing on page one of this form (specify the exact documents or other things to be produce; if electronically stored information is demanded, the form or forms in which each type of information is to be produced may be specified):

☐ Continued on Attachment 2.

3. Good cause exists for the production of the documents, electronically stored information, or other things described in paragraph 2 for the following reasons:

☐ Continued on Attachment 3.

4. The documents, electronically stored information, or other things described in paragraph 2 are material to the issues involved in this case for the following reasons:

☐ Continued on Attachment 4.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

see attached declaration
(TYPE OR PRINT NAME)

(SIGNATURE OF ☐ SUBPOENAING PARTY ☐ ATTORNEY FOR SUBPOENAING PARTY)

Request for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the date on which you are to appear. Contact the clerk's office or go to www.courts.ca.gov/forms for Request for Accommodations by Persons With Disabilities and Response (form MC-410). (Civil Code, § 54.8.)



(Proof of service on page 3)

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UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

DEMAS YAN,

Appellant,

vs.

TONY FU, CRYSTAL LEI, WEI SUEN,
 BRYANT FU, and STELLA HONG
 CHEN,

Appellees.

) CASE NO. 3:11-cv-01814-RS

)
)
) **DECLARATION OF MARK A. SERLIN IN**
) **SUPPORT OF SUBPOENA DUCES**
) **TECUM SERVED ON DEMAS YAN**

) Date: June 27, 2017
) Time: 9:00 a.m.
) Ctm: F

I, Mark A. Serlin, declare:

1. I am an attorney duly licensed to practice law by the State of California and am counsel to judgment creditor Crystal Lei ("Lei") in the above-referenced matter. I make this declaration based on personal knowledge, and if called as a witness to testify as to matters stated herein, I would be willing and competent to do so.

2. Judgment debtor Demas Yan ("Debtor") has been ordered to appear for a debtor's examination pursuant to Code of Civil Procedure § 708.110, *et seq.* The debtor's examination is necessary in order for Lei to determine the assets of the Debtor so Lei may take steps to enforce the judgment against Debtor.

///

1 3. In that regard, it is necessary and appropriate that Lei have access to documents in
2 Debtor's possession, custody, and/or control which reflect upon the Debtor's assets. The
3 documents to be produced at the debtor's examination are as follows:

4 **DEFINITIONS AND INSTRUCTIONS**

5 Unless the context indicates otherwise, the following words and phrases will be defined
6 and used herein as follows:

7 A. Debtor Demas Yan is referred to herein as "DEBTOR" and use of the term
8 "DEBTOR" refers to all of DEBTOR's past and present attorneys, accountants, employees,
9 agents, representatives, corporations, predecessor or successor corporations, partnerships and
10 anyone else acting on DEBTOR's behalf or otherwise subject to its control.

11 B. "PERSON" as used herein refers to and includes any natural individual,
12 governmental entity or business entity, including a corporation or partnership, association or other
13 entity or combination thereof, and all corporations, divisions, or entities affiliated with, owned or
14 controlled directly or indirectly by, or owning or controlling directly or indirectly any such
15 entities, as well as directors, officers, employees, agents, attorneys or other representatives thereof,
16 or third parties retained by any of the above.

17 C. "DOCUMENT" as used herein refers to and includes any kind of written,
18 typewritten or printed material, any kind of graphic material, or any kind of electronic or
19 mechanically recorded material, including facsimiles and computer discs, however produced or
20 reproduced, whether draft or final, whether signed or unsigned, including each original and
21 nonidentical copy, whether different from the original by means of notes made on such copy or
22 otherwise, and if the original is not in existence, the best copy or reproduction thereof.

23 D. "COMMUNICATION" as used herein refers to any transmission or transfer or
24 information of any kind orally, in writing, or in any other manner, at any time or place, and under
25 any circumstances whatsoever.

26 E. The phrases "RELATING TO", "RELATED TO" and "RELATES TO" as used
27 herein mean summarizing, describing, regarding, containing any record of, reference to or
28 indication of, or referring to in any way.

1 The time period covered by these document requests is January 1, 2012 through and
2 including the examination date.

3 **DOCUMENTS TO BE PRODUCED**

- 4 1. All bank statements for any and all deposit accounts held by DEBTOR.
5 2. All check registers for any and all checking accounts over which DEBTOR has had
6 any control and/or signature authority.
7 3. All DOCUMENTS evidencing title to any real property in which DEBTOR has any
8 interest.
9 4. All DOCUMENTS RELATING TO any real property in which DEBTOR holds or
10 held any interest, in whole or in part.
11 5. All DOCUMENTS RELATING TO the value of any interest in any real property
12 owned by DEBTOR.
13 6. All lease DOCUMENTS by which DEBTOR has leased space.
14 7. All DOCUMENTS RELATING TO any rental of real property by DEBTOR.
15 8. All financial statements of DEBTOR.
16 9. All DOCUMENTS RELATING TO any loans by any PERSON to DEBTOR.
17 10. All DOCUMENTS RELATING TO any loans by DEBTOR to any PERSON.
18 11. All DOCUMENTS of title for any vehicles owned or leased in whole or in part by
19 DEBTOR.
20 12. All registration certificates for any vehicles owned or leased in whole or in part by
21 DEBTOR.
22 13. All DOCUMENTS evidencing any securities accounts owned or controlled by
23 DEBTOR.
24 14. All DOCUMENTS RELATING TO any corporation, partnership, and/or limited
25 liability company owned or controlled, in whole or in part, by DEBTOR.
26 15. All pleadings in any legal proceeding in which DEBTOR is a party. For the
27 purposes of this request, the term "pleading" includes any complaint, cross-complaint, amended
28 complaint, answer, amended answer, petition, response to a petition, order, and/or judgment.

1 16. All stock certificates for stock owned by DEBTOR.

2 17. All bonds owned by DEBTOR.

3 18. All financial DOCUMENTS for any and all businesses owned and/or operated by
4 DEBTOR, in whole or in part. Without limiting the generality of the foregoing, the
5 DOCUMENTS in this category include profit and loss statements, cash flow statements, accounts
6 receivable aging reports, general ledgers, and the like.

7 19. All loan DOCUMENTS for any obligation owed by DEBTOR, including but not
8 limited to any promissory notes, credit agreements, and applications for such credit.

9 20. All DOCUMENTS evidencing any security agreement in which DEBTOR grants
10 any PERSON a security interest in any property.

11 21. All DOCUMENTS which reflect any deposit accounts held or controlled by
12 DEBTOR or over which DEBTOR has/had signature authority.

13 22. All DOCUMENTS RELATING TO any judgments in favor of DEBTOR, whether
14 unsatisfied in whole or in part.

15 23. All DOCUMENTS RELATING TO any trust in which DEBTOR is a trustor,
16 trustee, or beneficiary.

17 24. All reports prepared by any bookkeepers, accountants, or certified public
18 accountants employed by DEBTOR or any business owned or controlled by DEBTOR.

19 25. All DOCUMENTS RELATING TO any safe or safe deposit box owned or held by
20 DEBTOR or any entity owned or controlled by DEBTOR.

21 26. All DOCUMENTS RELATING TO any rare coins, stamps, jewelry, antiques,
22 and/or works of art in which DEBTOR has an interest.

23 27. All DOCUMENTS RELATING TO any sources of income of DEBTOR,
24 including, but not limited to, management contracts and the like.

25 28. All DOCUMENTS RELATING TO any policies of insurance (including, but not
26 limited to, life insurance) in which DEBTOR has any interest.

27 29. All DOCUMENTS RELATING TO any IRA, pension, or other retirement fund or
28 plan in which DEBTOR has any interest.

1 30. All DOCUMENTS RELATING TO any transfer of assets by DEBTOR to any
2 PERSON other than in the normal course of DEBTOR's business.

3 31. All DOCUMENTS RELATING TO the closure of any business operated by
4 DEBTOR.

5 32. All DOCUMENTS RELATING TO the closure of any bank accounts held or
6 controlled by DEBTOR.

7 33. All DOCUMENTS RELATING TO any storage facility used by DEBTOR to store
8 any assets or records.

9 34. All DOCUMENTS RELATING TO any COMMUNICATIONS between
10 DEBTOR and any financial institution at which DEBTOR has held any account including, without
11 limitation, all correspondence, notes of conversations, and DOCUMENTS transmitted by
12 facsimile.

13 I declare under penalty of perjury that the foregoing is true and correct and that this
14 declaration was executed at Sacramento, California, on May 9, 2017.

15
16 
17 _____
18 MARK A. SERLIN
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28

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Hannah Kaufman & Associates, Inc.

1 any rent for the 7th Avenue property?

2 A. No, I don't.

3 Q. Was it within the last year?

4 A. No.

5 Q. Okay. Mr. Yan, you were served with a subpoena
6 duces tecum to bring records, various documents to this
7 examination. Did you bring any documents with you
8 today?

9 A. Not in the paper form.

10 Q. Did you bring them in any form?

11 A. I have it in electronic form. But also, before
12 I begin, I want to lay the groundwork here.

13 What was the -- so, what is the justification
14 for this examination? What judgment are you claiming
15 that I owe?

16 Q. Well, there is the judgment that was entered by
17 the Ninth Circuit that was entered on June 24th, 2016,
18 for \$37,000 and change.

19 A. Okay. That one I have no issues with.

20 Q. Okay. Well, you haven't paid it. That's why we
21 are here.

22 A. Another reason why I am here?

23 Q. No, that is the one.

24 Have you got a payment? We can end this right
25 now. Just cut the check.

CERTIFICATE OF REPORTER

I, Candace Holroyd, Certified Shorthand Reporter
No. 1370, do hereby certify the following:


That the within-entitled ORDER OF EXAMINATION OF
DEMAS YAN was reported by me at the time and place
mentioned herein;

That I am not of counsel or attorney for any of
the parties in the caption, nor in any way interested in
the outcome of the cause named in said caption;

That the proceeding was transcribed by computer
by me or under my supervision to the best of my ability,
and that the within transcript is complete and correct.

DATED:

7-1-2017



CANDACE HOLROYD, CSR 1370

**SERLIN &
WHITEFORD, LLP**
ATTORNEYS AT LAW

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Mark A. Serlin
mserlin@globelaw.com

Kevin P. Whiteford
kwhiteford@globelaw.com

June 29, 2017

VIA EMAIL

Demas Yan
100 Pine Street #1250
San Francisco, CA 94111

Re: Demas Yan v. Tony Fu, et al.

U.S. District Court, Northern District Case No. 3:11-cv-01814-RS

Dear Mr. Yan:

You're lucky that the Court did not hold you in contempt for failure to bring documents which we properly subpoenaed to the debtor's examination earlier this week. In any case, you need to produce the documents that you promised to send me via email forthwith. Those documents should include the last 3 years of your tax returns, any and all documents pertaining to the Fung judgment assignment, all documents relating to the sale of your condominium in Hong Kong, all documents relating to any bank accounts over which you have signature authority, all documents relating to payments for office rent, utilities, and the like, all documents reflecting billing statements sent to clients, all documents relating to accounts receivable of yours, all credit card bills, and all other documents required by the subpoena. At the risk of stating the obvious, any objections that might have been made to the subpoena have long since been waived by reason of your failure to either file objections or file a motion to quash. If the documents required by the subpoena are not produced forthwith, I will seek a contempt order against you.

Very truly yours,


MARK A. SERLIN

MAS/ms

Cc: Clients

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Exhibit D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DEMAS YAN,

Appellant,

v.

CRYSTAL LEI, et al.,

Appellees.

Case No. 11-cv-01814-RS (JSC)

**ORDER COMPELLING YAN TO
PRODUCE DOCUMENTS**

These proceedings arise out of Crystal Lei's attempt to collect a judgment she obtained against Demas Yan to cover attorneys' fees and costs she incurred in connection with a Ninth Circuit appeal pursued by Yan. After Yan did not bring subpoenaed documents to his judgment debtor exam, the Court ordered him to produce the subpoenaed documents. He subsequently produced a few documents, but failed to produce the majority. Accordingly, at the judgment creditor's request, the Court issued an Order to Show Cause why Mr. Yan should not be held in contempt. The Court held a hearing on August 10, 2017 at which Mr. Yan appeared in person.

As discussed on the record at the hearing, Mr. Yan is ordered to produce the following documents to the judgment creditor's counsel on or before August 31, 2017:

- Tax returns for the years 2016, 2015 and 2014
- Documents pertaining to the Fung judgment assignment to the extent he has any interest in the judgment
- Documents relating to the sale of the Hong Kong condominium he listed on his bankruptcy disclosures
- Documents relating to payments for office rent and expenses from 2014 to the present

Exhibit B

- Monthly bank statements from 2014 to the present
- Documents evidencing loans made by or to Mr. Yan from 2014 to the present
- Documents evidencing trusts in which Mr. Yan is the trustor, trustee or beneficiary from 2014 to the present
- Documents identifying deposit accounts to which Mr. Yan has signature authority from 2014 to the present
- Documents evidencing any sources of income from 2014 to the present (but not including attorney-client documents).

The Order to Show Cause (Dkt. No. 52) is discharged. Should the judgment creditor wish to bring a further ex parte motion for an order to show cause, the creditor's motion must set forth the authority for the requested order and proposed remedies.

IT IS SO ORDERED.

Dated: August 10, 2017


JACQUELINE SCOTT CORLEY
United States Magistrate Judge

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

YAN,

Plaintiff,

v.

FU,

Defendant.

Case No. 3:11-cv-01814-RS (JSC)

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.


That on August 10, 2017, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Demas W Yan
300 Frank H. Ogawa Plaza
#218
oakland, CA 94612

Tony Fu
5813 Geary Boulevard
PMB 188
San Francisco, CA 94121

Dated: August 10, 2017

Susan Y. Soong
Clerk, United States District Court

By: 
Lashanda Scott, Deputy Clerk to the
Honorable JACQUELINE SCOTT CORLEY

From: Dennis Yan [mailto:anewlaw@gmail.com]
Sent: Thursday, August 31, 2017 11:03 AM
To: Mark Serlin
Subject: RESPONSE TO ORDER TO PRODUCE DOCUMENTS

1. Tax returns for 2014-2016:

Response - On advise of counsel, I assert the Fifth Amendment privilege. Privilege against self-incrimination applies to testimony as well as compel production of documents. Act of Production is tantamount to testimony as to existence, custody, and authentication of documents. *United States v. Doe* 465 U.S. 605 (1984). "The right to assert one's privilege against self-incrimination does not depend upon the likelihood, but upon the possibility of prosecution." *In re Master Key Litig.*, 507 F.2d 292, 293 (9th Cir. 1974) (citing *Hoffman v. United States*, 341 U.S. 479, 486-87 (1951)); *Isaacs v. United States*, 256 F.2d 654, 658 (8th Cir. 1958). There is no requirement that a criminal action be ongoing, and in fact, one may assert the privilege against self-incrimination even when "the federal government and the states do not appear particularly interested in bringing criminal actions." *Master Key*, 507 F.2d at 293. Moreover, the fact that the Fifth Amendment privilege is raised in a civil proceeding rather than a criminal prosecution does not deprive a party of its protection. *Lefkowitz v. Cunningham*, 431 U.S. 801, 805 (1977).

2. Documents pertaining to Fung judgment assignment Response - I have no documents other than communications subject to attorney-client privilege.

3. Documents related to Hong Kong condo.

Response - I have no documents in my possession, custody or control..

4. Documents related to payments for office rent 2014 to present.

Response - I have no documents for payments other than information reflected in bank statements provided.

5. Monthly bank statements 2014 to present.

Response - see attached.

6. Documents evidencing trusts.

Response - I have no documents in my possession, custody or control..

7. Documents identifying deposit accounts.

Response - I have no other documents other than those in response to no. 5.

8. Documents evidencing sources of income 2014 to present.

Response - I have no documents that are not attorney-client privileged.

Exhibit C